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United States Government

Department of Energy

JUN 15 3 05 PM '92
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Rocky Flats Office

memorandum

ACTION *Kersh*
DIST. LTR ENC

JUN 12 1992

EG&G
ROCKY FLATS PLANT
CORRESPONDENCE CONTROL

ERD:BKT:6620

Environmental Evaluation Work Plans for Operable Units 9 and 10

Jack
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EG&G Rocky Flats, Inc.

This memorandum is in response to the Environmental Evaluation Work Plans for OUs 9 and 10 at the RFP. In these Work Plans, Table 4 lists the house finch (*Caprodacus mexicanus*) and the American Robin (*Turdus migratorius*) as potential target taxa for the ecotoxicological investigation. Note, however, that this memorandum applies to all ecological activities at the RFP involving migratory birds involving "take" as defined in 50CFR Part 10 Subpart B.

Both the house finch and American Robin are protected by the Migratory Bird Treaty Act (MBTA) and are listed in 50CFR Part 10.13. Thus, the taking of these birds requires that a permit be obtained from the U.S. Fish and Wildlife Service (FWS) per 50CFR Parts 13 and 21.

It should also be noted that Part 300.400(e), Subpart E, of the National Contingency Plan (NCP) states that federal permits are not required for on-site response actions conducted pursuant to CERCLA sections 104, 106, 120, 121, or 122. It is further stated that federal permits, if required, shall be obtained for all response activities conducted off-site. Note that OU 3 is off-site. For on-site response activities under CERCLA, the preamble to the NCP states that the substantive (and not the administrative) requirements must be met.

Therefore, we request that EG&G initiate actions to comply with the MBTA and its implementing regulations as soon as it is apparent that ecological activities will require the taking of migratory birds. If the response actions are on-site and are conducted pursuant to CERCLA sections 104, 106, 120, 121, or 122, the Substantive portions of 50CFR Parts 13 and 21 must be met. In this case, DOE/RFO requests that both EPA and FWS be involved to assure that the substantive portions of the MBTA and its implementing regulations are met. If response actions are on-site and are not conducted pursuant to the aforementioned CERCLA sections, DOE/RFO requests that you obtain a permit from the FWS. The same applies to all off-site activities.

Reviewed for Addressee
Corres. Control-RFP615-92 *Ca*

DATE BY

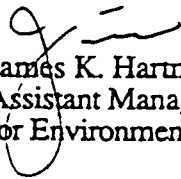
ADMIN RECORD

J. M. Kersh
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Questions or concerns regarding this memorandum should be directed to Bruce Thatcher of my staff at 966-3532.


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